S.B. CIVIL SECOND APPEAL NO.162/2005

State of Rajasthan & Ors. vs. Madan Singh.

Date : 9.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, for the appellants.

- - - - -

Heard learned counsel for the appellants.

The appellants are aggrieved against the concurrent findings of fact recorded by the two courts below in the judgments and decrees dated 11.9.2002 and 23.4.2004 by which the trial court decreed the suit of the plaintiff and granted decree for prohibitory injunction against the appellants restraining them from interfering in the plaintiff's property mentioned in para no.2 of the plaint and more particularly Plot No.A/19 of Khasra No.1003 Min which was described by filing a site plan wherein the property is marked as 'ABCD'. The two courts below found from the evidence of the patwari of the area who deposed that the land of the school is 9 bighas 18 biswas whereas the school is claiming it to be 11 bighas 11 biswas. The trial court as well as the appellate court rejected the plea of the appellants that they are not encroaching upon the land of the plaintiff. In view of the evidence produced upon the record, two courts below restrained the appellants from interfering in the land of the plaintiff.

According to learned counsel for the appellants, the appellants are not interfering in the enjoyment of the land of the plaintiff but in fact in the garb of decree passed in the suit, the plaintiff want to encroach upon the land of the State.

I have considered the submissions of learned counsel for the appellant.

It is clear from the decree dated 11.9.2002 passed by the trial court and which was upheld by the appellate court that the court only restrained the appellants from interfering in the land of the plaintiff mentioned in the plaint and by this judgment and decree, the appellants have not been restrained from protecting their own land if the plaintiff/respondent is interfering or trying to encroach upon the land of the appellants, then that cannot be a ground to interfere in the judgments and decrees passed by the two courts below as that was not even subject matter in the suit filed by the plaintiff nor the plaintiff ever claimed that he has any right over the property of the school or of the appellants.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya